IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 31 OF 2002

State of Goa
(Police Inspector)
Old Goa Police Station. ... Appellant.

versus

Dilawar Patel
s/o Appasaheb Patele,
r/o Bhoipal, Honda,
Near Telco Company,
Sattari-Goa. ... Respondent.

Mr. S. N. Sardessai, Public Prosecutor for the Appellant/ State.

Mr. Rohit Bras De Sa, Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 21ST AUGUST,2003.

ORAL JUDGMENT

The Appellant/State being aggrieved by the Judgment of the Judicial Magistrate First Class, Panaji, dated 30th July, 2001, in Criminal Case No.220/92/C, acquitting the Respondent/Accused for an offence punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code and Section 185 of the

Motor Vehicle Act, 1988, has filed the present Appeal challenging the aforesaid acquittal.

2. The facts as are necessary for the decision of the Appeal are set out hereunder:-

P.W.15, Deu Banaulikar, was the P.I. attached to the Ribandar Police Station. According to P.W.16, Jacque D'Souza, after the registration of the crime by Head Constable M. T. Dessai, he proceeded to the scene of the accident and drew the panchanama at Exh.PW8/A in the presence of P.W.8, Gurudas Naik. He recorded the statements of the occupants and the driver of the jeep which was involved in the accident. The accident had occurred between the bus which was being driven by the Accused and the Government jeep. On 19th July, 1992, P.W.15, P.I. Deu Banaulikar, conducted the Inquest Panchanama of the dead bodies of Mrs. Tejeshwani Deshprabhu and Mrs. Revati Chinconkar. The Inquest Panchanama are at Exh.PW12/A and Exh.1/A. After completion of the investigation, a charge-sheet against the Respondent/Accused came to be filed.

3. The learned Judicial Magistrate First Class, Panaji, vide Exh.2, explained the particulars of the offence to the Respondent/Accused. The Respondent/Accused pleaded not guilty and claimed to be

tried. The prosecution in support of its case examined 16 witnesses.

4. The pivot of the prosecution case is the evidence of P.W.2, Subhas Mandrekar, who was the driver of the Government jeep. He states that there was a programme of the Social Welfare Department in the village Chimbel in July, 1992. On 18th July, 1992, after the conclusion of the programme, he was returning from Chimbel towards Panaji in a jeep which was being driven by him. On the front seat next to him, Mrs. Abreu, P.W.5 and one lady were sitting. The other ladies were sitting on the rear seat of the jeep. When the jeep reached the place inbetween Ribandar and Panaji, he saw a bus coming in zig zag manner, proceeding towards Ribandar. Seeing the bus, he took the jeep to the extreme left of the road after slowing down the speed. The bus which was coming in the opposite direction dashed against the right side of the jeep. In the cross-examination, he has admitted that the authorised persons in the said jeep were six including the driver. He has clarified this further to say that one person was permitted to sit on the front seat in addition to the driver and four persons were permitted to be seated in the rear seat. He has further admitted that the other person sitting in the front seat was an unauthorised person. He has further

admitted that the road was wide enough to permit two vehicles to pass. He has denied the suggestion that because two other persons besides him were occupying the front seat, he was unable to manoeuvre the jeep properly. P.W.3, Sanjay Dessai, was the conductor on the bus which was being driven by Respondent/Accused. He states that at about 5 minutes to 3 p.m., the driver along with the cleaner boarded the bus and parked the bus at the Panaji-Belgaum stand. Then the Respondent and one of his friends went out and after some time the driver and his friend entered the bus. At that time, he could discern the smell of liquor but was unable to tell as to who had consumed liquor. At 3 p.m., the bus left the Kadamba stand for its journey to Belgaum and there were ten passengers in the bus. He further states that when he was in the process of issuing tickets to the passengers, he heard some sound and it was the sound of an accident between the bus and the jeep. In the cross-examination, he has stated that he could not tell the speed of the bus at the time of the accident.

5. P.W.4, Sheila Sirsat, was sitting on the front seat along with P.W.5, Maria Abreu. The evidence of both these witnesses is similar to that of P.W.2, Subhas Mandrekar. Both of them, have denied the suggestion that since three persons including the

driver were sitting on the front seat, the driver was unable to manoeuvre the jeep.

6. P.W.7, Vijayanandini Baldekar, was sitting on the rear seat of the jeep and, therefore, is unable to state as to how the accident occurred.

7. P.W.9, Prakash Azavedo is the Motor Vehicle Inspector who had examined the bus and the jeep. The accident report form of the bus and the jeep is at Exh.PW9/A. Significantly, in respect of the jeep, he had noticed that apart from the damage to the jeep, the driver's side tyre tube had burst. In the cross-examination, he has admitted that if more than one passenger sits in the front seat the movement of the driver in controlling the vehicle is hampered. He has also admitted that if the front tyre of the jeep burst, there are chances of the vehicle going out of control.

8. P.W.10, Dr. Jose Diniz, had examined the Accused and found that the Accused was smelling of alcohol and the speech was slurred, the gait was reeling, finger to nose test was negative, pupils were dilated, knee reflexes were sluggish. His opinion was that the Accused was under the influence of liquor and was unable to take care of himself. He had examined

the Accused at 5.45 p.m. The post mortem on the dead bodies was performed by Dr. E. J. Rodrigues. According to P.W.13, Dr. Rodrigues, Tejeshwani had died due to haemorrhage with shock with spine and celebral injuries as a result of blunt force impact and Revati had died due to haemorrhage and shock due to injuries to lungs, liver, spleen, caused by blunt force impact. There does not appear to be much challenge to the findings of the post mortem.

9. The learned Trial Court has acquitted the Respondent/Accused principally on the ground that from the evidence of the prosecution the possibility of the jeep driven by P.W.2, Subhas Mandrekar, going out of control as a result of the bursting of the tyre could not be ruled out. The learned Trial Court thus extended the benefit of doubt to the Respondent/Accused as the prosecution had not been able to establish beyond reasonable doubt that the accident had occurred solely due to the rash or negligent act of the Respondent/Accused. The learned Trial Court acquitted the Respondnt/Accused for an offence punishable under Section 185 of the Motor Vehicle Act, 1988 on the ground that the medical report of the Accused on he being examined by P.W.10, Dr. Jose Diniz, did not refer to the Accused. In fact, P.W.10, Jose Diniz, in his cross-examination, has admitted "I did not examine

the patient named Dilawar. The certificate at Exh.PW10/A also does not bear the signature of the Respondent/Accused. The report of the examination of the blood also did not state the percentage of alcohol in the blood. The learned Trial Court, therefore, extended the benefit of doubt to the Respondent/Accused.

10. With the assistence of the learned Counsel for the Appellant and the Respondent, I have perused the evidence on record. The view taken by the learned Trial Court appears to be a possible view on the basis of the evidence on record. There is no perversity in the reasoning of the learned Trial Court so as to warrant any interference in an appeal against acquittal. The learned Trial Court has come to a conclusion that the possibility of the jeep losing the control on account of the bursting of the tyre could not be ruled out and is based on the admission given by the Motor Vehicle Inspector, P.W.9, Prakash Azavedo. In such circumstances, according to me, the prosecution has not been able to establish that the accident occurred solely as a result of the rash or negligent driving of the Respondent/Accused.

11. In view of this, therefore, according to me, the Appeal against acquittal filed by the

Appellant/State is devoid of any merit and deserves to be dismissed.

12. Accordingly, Criminal Appeal No.31 of 2002 is dismissed.

P. V. HARDAS, J.

RD.